

IC 27-8-8

Chapter 8. Indiana Life and Health Insurance Guaranty Association Law

IC 27-8-8-1

Covered policies

Sec. 1. (a) This chapter provides coverage to the persons specified in section 1.5 of this chapter for:

- (1) direct life insurance policies;
- (2) health insurance policies;
- (3) annuity policies;
- (4) annuity contracts; and
- (5) contracts supplemental to life and health insurance policies;

issued by member insurers.

(b) This chapter does not provide coverage for:

- (1) that part of a variable life insurance or variable annuity contract not guaranteed by an insurer;
- (2) that part of a policy or contract where the risk is borne by the policyholder;
- (3) a policy or contract, in whole or part, assumed by the impaired or insolvent insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;
- (4) an employee benefit plan issued by a multiple employer welfare arrangement described in IC 27-1-34; and
- (5) any unallocated annuity contract, or portion of an unallocated annuity contract, that is not issued to or in connection with:

(A) a government lottery; or

(B) a specific benefit plan for employees, a union, or an association of natural persons.

(c) This chapter does not apply to an insurer determined by the commissioner to be impaired or insolvent before September 2, 1978. *As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.1-1989, SEC.56; P.L.192-1991, SEC.3; P.L.1-1992, SEC.154; P.L.251-1995, SEC.18.*

IC 27-8-8-1.5

Persons provided coverage

Sec. 1.5. (a) This chapter provides coverage for covered policies to the persons specified in subsections (c) and (d).

(b) Except as provided in subsection (d), this chapter does not provide coverage for a nonresident certificate holder under a group policy or contract.

(c) This chapter provides coverage to a person who, regardless of where the person resides, is the beneficiary, assignee, or payee of a person covered under subsection (d).

(d) This chapter provides coverage to a person who:

- (1) in the case of a group covered policy, is the holder of a certificate issued under the covered policy, or in the case of all

other policies, is the holder of the covered policy; and
(2) if not a resident of Indiana, satisfies all of the following conditions:

(A) The insurer that issued the covered policy is domiciled in Indiana.

(B) The insurer never held a license or certificate of authority in the state in which the person is residing at the time the association becomes obligated for the covered policy.

(C) The state in which the person resides has an association similar to the association created under section 3 of this chapter.

(D) The person is not eligible for coverage by the association described in clause (C) solely by reason of the fact that the insurer has never held a license or certificate of authority in that state.

As added by P.L.251-1995, SEC.19.

IC 27-8-8-2

Definitions

Sec. 2. (a) As used in this chapter:

"Account" means one of the three (3) accounts created under section 3 of this chapter.

"Association" means the Indiana life and health insurance guaranty association created under section 3 of this chapter.

"Commissioner" refers to the commissioner of insurance.

"Contractual obligation" means an obligation under covered policies.

"Covered policy" means any policy or contract that is of a type described in section 1(a) of this chapter and is not excluded by section 1(b) of this chapter.

"Impaired insurer" means a member insurer deemed by the commissioner to be potentially unable to fulfill its contractual obligations.

"Insolvent insurer" means a member insurer who becomes insolvent and is placed under a final order of liquidation, rehabilitation, or conservation by a court.

"Member insurer" means any person that is licensed or holds a certificate of authority to transact in Indiana any kind of insurance for which coverage is provided under this chapter. The term includes any insurer whose license or certificate of authority to transact such insurance in Indiana may have been suspended, revoked, not renewed, or voluntarily withdrawn but does not include the following:

- (1) A medical and hospital service organization.
- (2) A health maintenance organization under IC 27-13.
- (3) A fraternal benefit society under IC 27-11.
- (4) The Indiana Comprehensive Health Insurance Association or any other mandatory state pooling plan or arrangement.
- (5) An assessment company or any other person that operates an

assessment plan (as defined in IC 27-1-2-3(y)).

(6) An interinsurance exchange authorized by IC 27-6-6.

(7) A prepaid limited health service organization or a limited service health maintenance organization under IC 27-13-34.

(8) A special service health care delivery plan under IC 27-8-7.

(9) A farm mutual insurance company under IC 27-5.1.

(10) Any person similar to any person described in subdivisions (1) through (9).

"Premiums" means direct gross insurance premiums and annuity considerations received on covered policies, less return premiums and considerations, and dividends paid or credited to policyholders on direct business. It does not include premiums and considerations on contracts between insurers and reinsurers. For purposes of assessments made under section 6 of this chapter, "premiums" for covered policies shall not be reduced on account of any limitation on benefits for which the association is obligated under section 5(l) of this chapter. However, "premiums" for assessment purposes does not include that portion of any premium exceeding five million dollars (\$5,000,000) for any one (1) unallocated annuity contract.

"Person" means any natural person, corporation, limited liability company, partnership, association, voluntary organization, trust, governmental organization or entity, or other business organization or entity.

"Resident" means any person who resides in Indiana at the time the association becomes obligated for an impaired or insolvent insurer. Persons other than natural persons are considered to reside in the state where their principal place of business is located.

"Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and held by a natural person (excluding a natural person acting as a trustee), except to the extent of any annuity benefits guaranteed to a natural person by an insurer under the contract or certificate. For the purposes of section 1.5 of this chapter, an unallocated annuity contract shall not be considered a group covered policy.

(b) For purposes of this chapter, a policy, contract, or certificate is considered to be held by the person identified on the policy, contract, or certificate as the holder or owner of the policy, contract, or certificate.

As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.8-1993, SEC.431; P.L.251-1995, SEC.20; P.L.129-2003, SEC.13.

IC 27-8-8-3

Creation of association; membership; accounts; costs

Sec. 3. (a) There is created a nonprofit legal entity referred to as the Indiana Life and Health Insurance Guaranty Association. To transact insurance in Indiana an insurer must be a member of the association. The association shall perform its functions under the plan of operation established in section 7 of this chapter. Its powers are to be exercised through a board of directors established under section 4 of this chapter. For purposes of administration and

assessment the association shall maintain three (3) accounts:

- (1) The health insurance account.
- (2) The life insurance account.
- (3) The annuity account.

(b) The association is under the immediate supervision of the commissioner and subject to Indiana insurance law. From the assessments specified in section 6 of this chapter, the association shall pay administrative costs and general expenses incurred by the commissioner in supervising the association and discharging the commissioner's obligations under this chapter.

As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.130-1994, SEC.43; P.L.116-1994, SEC.61.

IC 27-8-8-4

Board of directors

Sec. 4. (a) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(b) To select the initial board of directors, and initially organize the association, the commissioner shall give notice to all member insurers of the time and place of the organizational meeting. At the organizational meeting, each member insurer is entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the commissioner may appoint the initial members.

(c) In approving selections or in appointing members to the board, the commissioner shall consider whether all member insurers are fairly represented.

(d) Members of the board may be reimbursed from the assets of the association only for expenses incurred as members of the board of directors.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-5

Impaired insurers; insolvent insurers; liens; association powers and duties

Sec. 5. (a) If a domestic insurer is an impaired insurer, the association may, subject to any conditions imposed by the association other than those that impair the contractual obligations of the impaired insurer, and subject to the approval of the impaired insurer and the commissioner:

- (1) guarantee or reinsure, or cause to be guaranteed, assumed, or reinsured, any of the covered policies of the impaired insurer;
- (2) provide money, pledges, notes, guarantees, or other means as are proper to effectuate subdivision (1), and assure payment of the contractual obligations of the impaired insurer pending

- action under subdivision (1); and
- (3) loan money to the impaired insurer.

(b) If a domestic insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

- (1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured the covered policies of the insolvent insurer;
- (2) assure payment of the contractual obligations of the insolvent insurer; and
- (3) provide money, pledges, notes, guarantees, or other means as are necessary to discharge the contractual obligations of the insolvent insurer.

However, if the domestic insurer is subject to proceedings under IC 27-9-3 and the initial petition was filed after December 31, 1985, this subsection applies only to the covered policies of residents and nonresidents to whom coverage is provided under section 1.5(d) of this chapter and the contractual obligation of the insolvent insurer to residents and nonresidents to whom coverage is provided under section 1.5(d) of this chapter.

(c) If a foreign or alien insurer is an insolvent insurer, the association shall, subject to the approval of the commissioner:

- (1) guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured the covered policies of residents to whom coverage is provided under section 1.5(d) of this chapter;
- (2) assure payment of the contractual obligations of the insolvent insurer to residents to whom coverage is provided under section 1.5(d) of this chapter; and
- (3) provide money, pledges, notes, guarantees, or other means as are necessary to discharge its duties.

The association may appear, intervene, assert objections, or take other action as is necessary and appropriate to protect the interests of Indiana residents to whom coverage is provided under section 1.5(d) of this chapter who are policyholders of the foreign or alien insurer, in any insolvency proceeding involving the foreign or alien insurer, whether the proceeding is inside or outside Indiana.

(d) Subsection (c) shall not apply when the commissioner determines that the foreign or alien insurer's domiciliary jurisdiction or state of entry provides by statute protection that is substantially similar to that provided by this chapter for residents of Indiana. The protection provided by this chapter does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer.

(e) In carrying out its duties under subsections (b) and (c), permanent policy liens or contract liens may be imposed by the association in connection with a guarantee, assumption, or reinsurance agreement, if a court:

- (1) finds that the amounts that can be assessed under this chapter are less than the amounts needed to assure full and prompt performance of the insolvent insurer's contractual

obligations, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of policy or contract liens to be in the public interest; and

(2) approves the specific policy liens or contract liens to be used.

A court may make findings under subdivision (1) and approve policy liens or contract liens under subdivision (2) in any proceeding under IC 27-9 with respect to an insolvent insurer (including a proceeding under IC 27-9-4 in which affected policyholders or contract holders are given reasonable notice and an opportunity to be heard), or in an original proceeding involving a foreign or alien insurer instituted by the association against affected policyholders or contract holders who are residents of Indiana. Any policyholder or contract holder affected by a court's decision under this subsection may appeal the decision in the manner that appeals are taken from final judgments in other civil actions. All parties to the proceeding shall take note of and be bound by the appeal, but the appeal does not stay the proceeding.

(f) Before being obligated under subsections (b) and (c), the association may request that there be imposed temporary moratoriums or liens on payments of cash values and policy loans in addition to any contractual provisions for deferral of cash or policy loan values.

(g) If the association fails to act within a reasonable period of time as provided in subsections (b) and (c) of this section, the commissioner has the powers and duties of the association under this chapter with respect to insolvent insurers.

(h) Upon request, the association may assist and advise the commissioner concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(i) The association is entitled to appear before any court in Indiana with jurisdiction over an impaired or insolvent insurer to whom the association is or may become obligated under this chapter. Standing extends to all matters germane to the powers and duties of the association, including proposals for reinsuring or guaranteeing the covered policies of the impaired or insolvent insurer and the determination of the covered policies and contractual obligations.

(j) A person receiving benefits under this chapter assigns the rights under the covered policy to the association, to the extent of the benefits received by that person because of this chapter, whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of those rights by a payee, policy or contract owner, beneficiary, insured, or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this chapter on that person. The association is subrogated to these rights against the assets of an insolvent insurer.

(k) The subrogation rights of the association have the same priority against the assets of the insolvent insurer as those possessed

by the person entitled to receive benefits under this chapter.

(l) The association may not become liable for the contractual obligations of an insolvent insurer in excess of what the contractual obligations of the insolvent insurer would have been in the absence of an insolvency, unless the obligations are reduced as permitted by subsection (e). However, the aggregate liability of the association with respect to covered policies other than unallocated annuity contracts is not to exceed one hundred thousand dollars (\$100,000) in cash values, or three hundred thousand dollars (\$300,000) for all benefits, including cash values, with respect to any one (1) life. The aggregate liability of the association with respect to covered unallocated annuity contracts shall not exceed five million dollars (\$5,000,000) for all benefits, including cash values, with respect to any one (1) contract holder, irrespective of the number of unallocated annuity contracts held by the contract holder.

(m) The association may:

- (1) enter into contracts necessary to carry out the provisions of this chapter;
- (2) sue or be sued, including taking legal actions necessary to recover unpaid assessments under section 6 of this chapter;
- (3) borrow money to effect the provisions of this chapter;
- (4) employ or retain persons necessary to handle the financial transactions of the association or to perform other functions necessary under this chapter;
- (5) negotiate and contract with a liquidator, a rehabilitator, a conservator, or an ancillary receiver to carry out the powers and duties of the association;
- (6) take legal action necessary to avoid payment of improper claims; and
- (7) exercise, for the purposes of this chapter and to the extent approved by the commissioner, the powers of a domestic life or health insurer. However, in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired or insolvent insurer.

(n) Any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets.

As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.166-1986, SEC.1; P.L.130-1994, SEC.44; P.L.116-1994, SEC.62; P.L.251-1995, SEC.21.

IC 27-8-8-6

Assessments against insurers

Sec. 6. (a) For the purpose of providing funds necessary to carry out the powers and duties of the association and necessary to pay administrative costs and expenses incurred by the commissioner in supervising the association and discharging the commissioner's obligations under this chapter, the board of directors shall assess the member insurers, separately for each account as established in

section 3 of this chapter, at a time and for amounts as the board finds necessary. Assessments are due thirty (30) days after prior written notice to the member insurers. Interest is at six percent (6%) per year on and after the due date.

(b) Three (3) classes of assessments are established as follows:

(1) The first, to be referred to as Class A, consists of assessments made for the purpose of meeting administrative costs and other general expenses, including examinations conducted under section 9(f) of this chapter and not related to a particular impaired or insolvent insurer.

(2) The second class, to be referred to as Class B, consists of assessments made to the extent necessary to carry out the powers and duties of the association under section 5 of this chapter with regard to an impaired or insolvent domestic insurer.

(3) The third class, to be referred to as Class C, consists of assessments made to the extent necessary to carry out the powers and duties of the association under section 5 of this chapter with regard to an insolvent foreign or alien insurer.

(c) The amount of a Class B or C assessment must be allocated among the three (3) accounts, set out in section 3 of this chapter, in proportion to the contractual obligations on the policies covered by each account.

(d) The amount of a Class A assessment to be paid by each member insurer shall be determined by the board and may be made on a nonproportional basis. The amount assessed a member insurer each calendar year may not exceed fifty dollars (\$50), and the amount must be credited against future insolvency assessments.

(e) Except as provided in subsection (o), a member insurer shall only pay a proportion of a Class B assessment for those accounts that the member has in common with the impaired or insolvent domestic insurer in each state that the impaired or insolvent domestic insurer and member insurer have been authorized to transact the business of insurance. For each account that the member has in common with the impaired or insolvent domestic insurer in each state, the member insurer shall pay an amount equal to the product of:

(1) the total amount of the Class B assessment allocated to the account; multiplied by

(2) a fraction:

(A) the numerator of which is the premiums received on business in that state on policies covered by the account for the year preceding the year in which this assessment is made; and

(B) the denominator of which is the premiums received by all assessed member insurers on business in that state for the calendar year preceding the year this assessment is made.

(f) A member insurer shall only pay a proportion of a Class C assessment that the member has in common with the insolvent foreign or alien insurer. For each account that the member insurer has in common with the insolvent foreign or alien insurer, the

member insurer shall pay an amount equal to the product of:

(1) the total amount of the Class C assessment allocated to the account; multiplied by

(2) a fraction:

(A) the numerator of which is the premiums received on business in Indiana on policies covered by the account for the year preceding the year in which this assessment is made; and

(B) the denominator of which is the premiums received by all member insurers on business in Indiana for the calendar year preceding the year this assessment is made.

(g) Assessments shall not be made until necessary to implement the purposes of this chapter. Classification of assessments under subsection (b) and computation of assessments must be made as accurately as possible.

(h) The association may abate or defer, in whole or in part, the amount of an assessment that a member insurer is to pay if, in the opinion of the board, payment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated or deferred, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the computation provided for in this section.

(i) The total amount of all assessments to be paid by a member insurer for each account in any one (1) calendar year may not exceed two percent (2%) of the premiums received by the insurer from business in Indiana during the calendar year preceding the assessment on the policies covered by each account.

(j) If the maximum assessment for each account together with other assets of the association in that account, does not provide an amount sufficient to carry out the responsibilities of the association for one (1) year, additional funds must be assessed as soon as permitted by this chapter.

(k) The board may, as established in the plan of operation, refund to member insurers, in proportion to their contribution, the amount by which the assets of the account, including assets accruing from net realized gains and income from investments, exceed the amount the board finds necessary to carry out the obligations of the association. A reasonable amount may be retained in an account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(l) An insurer, in determining its premium rates and policyowner dividends as to insurance within the scope of this chapter, may take into consideration the amount necessary to meet its assessment obligations under this chapter.

(m) The association shall issue to each insurer paying a Class B or C assessment a certificate of contribution, in a form prescribed by the commissioner, for the amount of each assessment paid. All outstanding certificates are of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution

may be shown by the insurer in its financial statement as an asset in a form and for an amount and period of time as the commissioner may approve.

(n) The board may, as established in the plan of operation, agree to accord a member insurer a credit against the amount of a Class B or C assessment otherwise payable by that member insurer with respect to contractual obligations of an impaired or insolvent insurer to the extent, but only to the extent, that the member insurer has, by means of payment, guarantee, assumption, or reinsurance, taken action to reduce the contractual obligations of the impaired or insolvent insurer with respect to which the assessment is made and for which the association would otherwise be responsible.

(o) Notwithstanding subsection (e), this subsection applies where a domestic insurer has been subject to proceedings under IC 27-9-3 and the initial proceeding was filed after December 31, 1985. A member insurer shall only pay a proportion of a Class B assessment for those accounts that the member has in common with the impaired or insolvent domestic insurer in Indiana. For each account that the member has in common with the impaired or insolvent domestic insurer in Indiana, the member insurer shall pay an amount equal to the product of:

(1) the total amount of the Class B assessment allocated to the account; multiplied by

(2) a fraction:

(A) the numerator of which is the premiums received on business in Indiana on policies covered by the account for the year preceding the year in which this assessment is made; and

(B) the denominator of which is the premiums received by all assessed member insurers on business in Indiana for the calendar year preceding the year this assessment is made.

As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.16-1984, SEC.17; P.L.166-1986, SEC.2; P.L.130-1994, SEC.45; P.L.116-1994, SEC.63.

IC 27-8-8-7

Association plan of operation

Sec. 7. (a) The association shall submit to the commissioner a plan of operation and any amendments to it to assure the fair, reasonable, and equitable administration of the association. The plan of operation is effective upon the commissioner's approval, which must be written. All member insurers must comply with the plan of operation.

(b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days from September 1, 1978, or, if at any other time, the association fails to submit suitable amendments to the plan, the commissioner shall adopt rules under IC 4-22-2 necessary to effectuate the provisions of this chapter. The rules continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the

commissioner.

(c) The plan of operation must, in addition to requirements stated elsewhere in this chapter, establish:

- (1) procedures for handling the assets of the association;
- (2) the amount and method of reimbursing members of the board of directors under section 4 of this chapter;
- (3) regular places and times for meetings of the board of directors;
- (4) procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
- (5) procedures whereby selections for the board of directors will be made and submitted to the commissioner;
- (6) any additional procedures for assessments under section 6 of this chapter; and
- (7) additional provisions necessary for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under subdivision 5(m)(3) and section 6 of this chapter, are delegated to a corporation, association, or other organization that will perform functions similar to those of this association, or its equivalent, in two (2) or more states. The corporation, association, or organization is to be reimbursed for payments made on behalf of the association and is to be paid for its performance. A delegation under this subsection takes effect only upon approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization that extends protection that is substantially similar to that provided by this chapter.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-8

Powers of commissioner; appeals to commissioner; notice of effect of chapter

Sec. 8. (a) The commissioner shall:

- (1) upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;
- (2) when an impairment is declared and the amount of the impairment is determined, serve a demand on the impaired insurer to make good the impairment within a reasonable time (Notice to the impaired insurer shall constitute notice to its shareholders. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this chapter.);
- (3) in any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator; and
- (4) if a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of

entry, be appointed conservator.

(b) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in Indiana of a member insurer who fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on a member insurer who fails to pay an assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.

(c) Any action of the board of directors or the association may be appealed to the commissioner by a member insurer. An appeal must be taken within thirty (30) days of the action. A final action or order of the commissioner is subject to judicial review.

(d) The liquidator, rehabilitator, or conservator of an impaired insurer must notify all interested persons of the effect of this chapter.
As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-9

Detection and prevention of insurer insolvencies or impairments; actions of board of directors

Sec. 9. (a) To aid in the detection and prevention of insurer insolvencies or impairments, the commissioner shall:

(1) notify the commissioners of all the other states, territories of the United States and the District of Columbia when he takes any of the following actions against a member insurer:

(A) revokes its license;

(B) suspends its license; or

(C) makes any formal order that a company restrict its premium writing, obtain additional contributions to surplus, withdraw from Indiana, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(2) report to the board of directors when he takes any of the actions set forth in subdivision (a)(1) or when he has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or of the report received from another commissioner;

(3) report to the board of directors when he has reasonable cause to believe from any examination, whether completed or in process, of a member company that may be an impaired or insolvent insurer; and

(4) furnish to the board of directors the NAIC Early Warning Tests developed by the National Association of Insurance Commissioners. The board may use the information contained in those tests in carrying out its duties and responsibilities under this chapter. The report shall be kept confidential until made public by the commissioner or other authority.

(b) The notice required under subdivision 9(a)(1) must be mailed to all commissioners within thirty (30) days from the action taken.

(c) The commissioner may seek the advice of the board of directors concerning a matter affecting his duties and responsibilities in regard to the financial condition of member companies and companies seeking admission to transact insurance business in Indiana.

(d) Upon majority vote, the board of directors may make reports and recommendations to the commissioner on any matter related to the solvency, liquidation, rehabilitation, or conservation of a member insurer or related to the solvency of any company seeking to do insurance business in Indiana. The reports and recommendations are not public documents.

(e) Upon majority vote, the board of directors shall notify the commissioner of any information indicating that a member insurer is impaired or insolvent.

(f) Upon majority vote, the board of directors may request that the commissioner order an examination of a member insurer the board believes to be impaired or insolvent. Within thirty (30) days of the receipt of the request, the commissioner shall begin an examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as all other examination reports. In no event may the examination report be released to the board of directors before its release to the public, but this does not preclude the commissioner from complying with subsections (a) and (b) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination is to be kept on file by the commissioner but it is not open to public inspection before the release of the examination report.

(g) Upon majority vote, the board of directors may make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(h) The board of directors shall, at the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing information on the history and causes of the insolvency. The board shall also cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes for insolvency of an insurer, and may adopt by reference any report prepared by other associations.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-10

Liability of insured under plan not impaired; records of negotiations or meetings; application of assets of impaired insurers

Sec. 10. (a) Nothing in this chapter shall be construed as reducing the liability for unpaid assessments of the insureds on an impaired or insolvent insurer operating under a plan with assessment liability.

(b) Records must be kept of all negotiations and meetings in

which the association or its representatives were involved in discussing the activities of the association in carrying out its powers and duties under section 5 of this chapter. Records of negotiations or meetings are to be made public only upon:

- (1) termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer;
- (2) termination of the impairment of insolvency of the insurer;
- or
- (3) court order.

(c) Nothing in subsection (a) limits the duty of the association to present a report of its activities under section 12 of this chapter.

(d) For the purpose of carrying out its obligations under this chapter, the association is a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under section 5 of this chapter. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered policies, as used in this subsection, is that proportion of the assets that the reserves that should have been established for such policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(e) Before the termination of a liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the parties, including the association, the shareholders and policyowners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. Consideration should be given to the welfare of the policyholders of the continuing or successor insurer.

(f) No distribution to stockholders of an impaired or insolvent insurer may be made until the total amount of valid claims for funds expended by the association have been recovered.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-11

Distributions to affiliates; recovery

Sec. 11. (a) If an order for liquidation or rehabilitation of an insurer domiciled in Indiana has been entered, the receiver appointed under the order shall have a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five (5) years preceding the petition for liquidation or rehabilitation.

(b) No dividend is recoverable if the insurer shows that when the dividend was paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(c) A person who was an affiliate controlling the insurer at the time the distributions were paid is liable up to the amount of distributions he received. A person who was an affiliate controlling the insurer at the time the distributions were declared, shall be liable up to the amount of distributions he would have received if they had been paid immediately. If two (2) persons are liable with respect to the same distributions, they are jointly and severally liable.

(d) The maximum amount recoverable under this section shall be the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(e) If a person liable under this section is insolvent, the affiliates controlling it at the time the dividend was paid, shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-12

Examination and regulation of association; financial report

Sec. 12. The association is subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year, in a form approved by the commissioner, and a report of its activities during the preceding calendar year.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-13

Association tax and fee exemption

Sec. 13. The association is exempt from payment of all fees and all taxes levied by Indiana or any of its political subdivisions, except taxes levied on real property.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-14

Liability for performance under chapter

Sec. 14. A member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives are not liable for and no cause of action may be brought against them because of their performance under this chapter.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-15

Insolvent insurer proceedings; stay; setting aside judgment

Sec. 15. All proceedings in which an insolvent insurer is a party in Indiana shall be stayed sixty (60) days from the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on matters related to its powers or duties. The association may apply to have any judgment set aside by

the same court that made the judgment and is entitled to defend against the suit on the merits.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-16

Recoupment of assessments; tax credit or premium adjustment

Sec. 16. Member insurers who, during any preceding calendar year, have paid one (1) or more assessments levied under this chapter may either:

(1) take as a credit against premium taxes, adjusted gross income taxes, or any combination of them upon revenue or income of member insurers that may be imposed by Indiana up to twenty percent (20%) of an assessment described in section 6 of this chapter for each calendar year following the year in which those assessments were paid until the aggregate of those assessments have been offset by either credits against those taxes or refunds from the association; or

(2) include in the rates and premiums charged for insurance policies to which this chapter applies amounts sufficient to recoup a sum equal to the amounts paid to the association by the member less any amounts returned to the member insurer by the association and the rates are not excessive by virtue of including an amount reasonably calculated to recoup assessments paid by the member.

As added by Acts 1978, P.L.129, SEC.3. Amended by Acts 1979, P.L.255, SEC.2; Acts 1980, P.L.173, SEC.1; P.L.163-1986, SEC.2; P.L.192-2002(ss), SEC.168.

IC 27-8-8-17

Refunds from association written off; deposit in general fund

Sec. 17. Sums acquired by refund from the association that have been written off by member insurers and offset against taxes as provided by section 16 of this chapter, and not needed for the purposes of this chapter, shall be paid by the association to the commissioner for deposit with the state treasurer for deposit in the general fund.

As added by Acts 1978, P.L.129, SEC.3.

IC 27-8-8-18

Advertising referring to association

Sec. 18. A person, including an insurer, insurance producer, or affiliate of an insurer shall not place before the public, directly or indirectly, an announcement or statement that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this chapter. This section does not apply to the association or any other entity that does not sell or solicit insurance.

As added by Acts 1978, P.L.129, SEC.3. Amended by P.L.178-2003, SEC.62.